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THE ALABAMA CLAIMS.

S P E E C H

OF THE HONOURABLE

CHARLES SUMNER,

DELIVERED IN EXECUTIVE SESSION OF THE UNITED STATES SENATE,

On Tuesday, April 13th, 1869,

AGAINST THE RATIFICATION OF THE

JOHNSON-CLARENDON TREATY

FOR THE SETTLEMENT OF THE ALABAMA AND OTHER CLAIMS.

LONDON:

STEVENS BROTHERS,
HENRIETTA STREET, COVENT GARDEN, W.C.

1869.

LONDON :
SAVILL, EDWARDS AND CO., PRINTERS, CHANDOS STREET,
COVENT GARDEN.

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S P E E C H

OF THE

HON. CHARLES SUMNER,

*In Executive Session of the United States Senate,
April 13, 1869, on the Johnson-Clarendon Treaty
for the Settlement of the "Alabama" and other
Claims.*

MR. PRESIDENT: A Report recommending that the Senate do not advise and consent to a Treaty with a foreign Power, duly signed by the Plenipotentiary of the nation, is of rare occurrence. Treaties are often reported with amendments, and sometimes without any recommendation; but I do not recall an instance, since I came into the Senate, where such a Treaty has been reported with the recommendation which is now under consideration. The character of the Treaty seemed to justify the exceptional Report. The Committee did not hesitate in the conclusion that the Treaty ought to be rejected, and they have said so. I do not disguise the importance of this act; but I believe that in the interest of peace, which every one should have at heart, the Treaty must be rejected. A Treaty which, instead of removing an existing grievance, leaves it for heart-burning and rancour, cannot be considered a settlement of pending questions between two nations. It may seem to settle them, but does not. It is nothing but a snare. And such is the character of the Treaty now before us. The massive grievance under which our country suffered for years is left untouched; the painful

sense of wrong planted in the national heart is allowed to remain. For all this there is not one word of regret or even of recognition; nor is there any semblance of compensation. It cannot be for the interest of either party that such a Treaty should be ratified. It cannot promote the interest of the United States, for we naturally seek justice as the foundation of a good understanding with Great Britain; nor can it promote the interest of Great Britain, which must also seek a real settlement of all pending questions. Surely I do not err when I say that a wise statesmanship, whether on our side or on the other side, must apply itself to find the real root of evil, and then, with courage tempered by candour and moderation, see that it is extirpated. This is for the interest of both parties, and anything short of it is a failure. It is sufficient to say that the present Treaty does no such thing, and that whatever may have been the disposition of the negotiators, the real root of evil remains untouched in all its original strength. I make these remarks merely to characterize the Treaty and prepare the way for its consideration.

If we look at the negotiation which immediately preceded the Treaty, we find little to commend. You have it on your table. I think I am not mistaken when I say that it shows a haste which finds few precedents in diplomacy, but which is explained by the anxiety to reach a conclusion before the advent of a new Administration. Mr. Seward and Mr. Reverdy Johnson both unite in this unprecedented activity, using the Atlantic Cable freely. I should not object to haste or to the freest use of the Cable, if the result were such as could be approved; but, considering the character of the transaction, and how completely the Treaty conceals the main cause of offence, it seems as if the honourable negotiators were engaged in huddling something out of sight.

The Treaty has for its model the Claims Convention of 1853. To take such a Convention as a model was a strange mistake. That Convention was for the settlement of outstanding claims of American citizens

on Great Britain, and of British subjects on the United States, which had arisen since the Treaty of Ghent in 1815. It concerned individuals only and not the nation. It was not in any respect political; nor was it to remove any sense of national wrong. To take such a Convention as the model for a Treaty which was to determine a national grievance of transcendent importance in the relations of two countries, marked on the threshold an insensibility to the true nature of the difference to be settled. At once it belittled the work to be done. An inspection of the Treaty shows how, from beginning to end, it is merely for the settlement of individual claims on both sides, putting both batches on an equality; so that the sufferers by the misconduct of England may be counterbalanced by British blockade-runners. It opens with a preamble which, instead of announcing the unprecedented question between the two countries, simply refers to individual claims which have arisen since 1853—which was the last time of settlement—some of which are still pending and remain unsettled. Who would believe that, under these words of commonplace, was concealed that unsettled difference which has already so deeply stirred the American people, and is destined, until finally adjusted, to occupy the attention of the civilized world? Nothing here gives notice of the real question. I quote the preamble, as it is the key-note to the Treaty:—

“Whereas claims have at various times since the exchange of the ratifications of the Convention between Great Britain and the United States of America, signed at London on the 8th of February, 1853, been made upon the Government of her Britannic Majesty on the part of citizens of the United States, and upon the Government of the United States on the part of subjects of her Britannic Majesty; and whereas *some of such claims are still pending and remain unsettled*, her Majesty the Queen of the United Kingdom of Great Britain and Ireland, and the President of the United States of America, being of the opinion that a speedy and equitable settlement of all such claims will contribute much to the maintenance of the friendly feelings which subsist between the two countries, have resolved to make arrangements for that purpose by means of a Convention.”

The provisions of the Treaty are for the trial of these cases. A commission is constituted, which is empowered to choose an arbitrator; but in the event of a failure to agree, the arbitrator shall be determined "by lot" out of two persons named by each side. Even if this aleatory proceeding were a proper device in the umpirage of private claims, it is strangely inconsistent with the solemnity which belongs to the present question. The moral sense is disturbed by such a process at any stage of the trial; nor is it satisfied by the subsequent provision for the selection of a sovereign or head of a friendly State as arbitrator. The Treaty not merely makes no provision for the determination of the great question, but it seems to provide expressly that it shall never hereafter be presented. The petty provision for individual claims, subject to a set-off from the individual claims of England, so that in the end our country may possibly receive nothing, is the consideration for this strange surrender. I borrow a term from an English statesman on another occasion, if I call it a "capitulation." For the settlement of a few individual claims we condone the original, far-reaching, and destructive wrong. Here are the plain words by which this is done:—

"The high contracting parties engage to consider the result of the proceedings of this Commission as a full and final settlement of every claim upon either Government arising out of any transaction of a date prior to the exchange of the ratifications of the present Convention, and further engage that every such claim, whether or not the same may have been presented to the notice of, made, preferred, or laid before the said Commission, shall, from and after the conclusion of the proceedings of the said Commission, be considered and treated as finally settled and barred, and thenceforth inadmissible."

All this I quote directly from the Treaty. It is Article V. The national cause is handled as nothing more than a bundle of individual claims, and the result of the proceedings under the proposed Treaty is to be a "full and final settlement," so that hereafter all claims "shall be considered and treated as finally settled and barred, and thenceforth inadmissible." Here is no provision for the

real question, which, though thrust out of sight, or declared to be "finally settled and barred," according to the terms of the Treaty, must return to plague the two countries. Whatever the Treaty may say in terms, there is no settlement in fact, and until this is made there will be a constant menace of discord. Nor can it be forgotten that there is no recognition of the rule of international duty applicable to such cases. This too is left unsettled. While doing so little for us, the Treaty makes ample provision for all known claims on the British side. As these are exclusively "individual," they are completely covered by the text, which has no limitations or exceptions. Already it is announced in England that even those of "Confederate bondholders" are included. I have before me an English journal which describes the latter claims as founded on "immense quantities of cotton, worth at the time of their seizure nearly two shillings a pound, which were then in the legal possession of those bondholders;" and the same authority adds, "These claims will be brought, indifferently with others, before the designed joint commission whenever it shall sit." From another quarter I learn that these bondholders are "very sanguine of success *under the treaty as it is worded*, and certain it is that the loan went up from 0 to 10 as soon as it was ascertained that the Treaty was "signed." I doubt if the American people are ready just now to provide for any such claims. That they have risen in the market is an argument against the Treaty.

Passing from the Treaty, I come now to consider briefly, but with proper precision, the true ground of complaint; and here again we shall see the constant inadequacy of the remedy now applied. It is with reluctance that I enter upon this statement, and I do it only in the discharge of a duty which cannot be postponed. Close upon the outbreak of our troubles, just one month after the bombardment of Fort Sumter, when the rebellion was still undeveloped, when the National Government was beginning those gigantic efforts which ended so triumphantly, the country was startled by the news that the

British Government had intervened by a proclamation, which accorded belligerent rights to the rebels. At the early date when this was done the rebels were, as they remained to the close, without ships on the ocean, without prize courts or other tribunals for the administration of justice on the ocean, *without any of those conditions which are the essential prerequisites to such a concession*; and yet the concession was general, being applicable to the ocean and the land, so that by British fiat they became ocean belligerents as well as land belligerents. In the swiftness of this bestowal there was very little consideration for a friendly Power; nor does it appear that there was any inquiry into those *conditions-precedent* on which it must depend. Ocean belligerency being a "fact," and not a "principle," can be recognised only on evidence showing its *actual existence*, according to the rule, first stated by Mr. Canning and afterwards recognised by Earl Russell. But no such evidence was adduced; for it did not exist, and never has existed. Too much stress cannot be laid upon the rule, that belligerency is a "fact" and not a "principle." It is, perhaps, the most important contribution to this discussion, and its original statement, on occasion of the Greck revolution, does honour to its author, unquestionably the brightest genius ever directed to this subject. According to this rule, belligerency must be proved to exist; it must be shown. It cannot be imagined, or divined, or invented; it must exist as a "fact" within the knowledge of the world, or at least as a "fact" susceptible of proof. Nor can it be inferred on the ocean merely from its existence on the land. From the beginning, when God called the dry land earth and the gathering of the waters called He seas, the two have been separate, and the power over one has not necessarily implied power over the other. There is a dominion of the land and a dominion of the ocean. But, whatever power the rebels possessed on the land, they were always without power on the ocean. Admitting that they were belligerents on the land, they were never belligerents on the ocean.

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"The oak leviathans, whose huge ribs make
 Their clay creator the vain title take
 Of lord of thee, and arbiter of war;"

these they never possessed. Such was the "fact" that must govern the present question. The rule, so simple, plain, and intelligible, as stated by Mr. Canning, is a decisive touchstone of the British concession, which, when brought to it, is found to be without support. Unfriendly in the precipitancy with which it was launched, this concession was more unfriendly in substance. It was the first stage in the depredations on our commerce. Had it not been made, no rebel ship could have been built in England. Every step in her building would have been piracy. Nor could any munitions of war have been furnished. The direct consequence of this concession was to place the rebels on an equality with ourselves in all British markets, whether of ships or munitions of war. As these were open to the National Government, so were they open to the rebels. The asserted neutrality between the two began by this tremendous concession, when rebels, at one stroke, were transformed not only into belligerents, but into customers. In attributing to that bad proclamation this peculiar influence, I follow the authority of the Law Lords of England, who, according to authentic report, announced that without it the fitting out of a ship in England to cruise against the United States would have been an act of piracy. This conclusion was clearly stated by Lord Chelmsford, ex-Chancellor, speaking for himself and others, when he said:—

"If the Southern Confederacy had not been recognised as a *belligerent Power*, he agreed with his noble and learned friend [Lord Brougham] that, under these circumstances, if any Englishman were to fit out a privateer for the purpose of assisting the Southern States against the Northern States, *he would be guilty of piracy.*"

This conclusion is only according to analogies of law. It is criminal for British subjects to forge bombs or hand-grenades to be employed in the assassination of a

foreign sovereign at peace with England, as when Bernard supplied from England the missiles used by Orsini against the life of the French Emperor ; all of which is illustrated by Lord Chief-Justice Campbell, in his charge to the jury on the trial of Bernard, and also by contemporaneous opinions of Lord Lyndhurst, Lord Brougham, Lord Truro, and at an earlier day by Lord Ellenborough in a case of libel on the First Consul. That excellent authority, Sir George Cornewall Lewis, gives a summary drawn from all these opinions, when he says :—

“The obligation incumbent upon a State of preventing her soil from being used *as an arsenal* in which the means of attack against a foreign Government may be collected and prepared for use, is wholly independent of the form and character of that Government.” [*On Extradition*, page 75.]

As every Government is constrained by this rule, so every Government is entitled to its safeguards. There can be no reason why the life of our Republic should be less sacred than the life of an emperor, or should enjoy less protection from British law ! That England became an “arsenal” for the rebels we know, but this could not have been unless the proclamation had prepared the way. The only justification that I have heard for this extraordinary concession, which unleashed upon our country the furies of foreign war to commingle with the furies of rebellion at home, is that President Lincoln undertook to proclaim a *blockade* of the rebel ports. By the use of this word “blockade” the concession is vindicated. Had President Lincoln proclaimed a *closing* of the rebel ports, there could have been no such concession. This is a mere technicality. Lawyers might call it an *apex juris* ; and yet on this sharp point England hangs her defence. It is sufficient that in a great case like the present, where the correlative duties of a friendly Power are in question, an act fraught with such portentous evil cannot be vindicated on a technicality. In this debate there is no room for technicality on either side. We must look at the substance and find a reason in nothing short of overruling necessity. War cannot be justified

merely on a technicality; nor can the concession of ocean belligerency to rebels without a port or prize court. Such a concession, like war itself, must be at the peril of the nation making it.

The British assumption, besides being offensive from mere technicality, is inconsistent with the proclamation of the President, taken as a whole, which, while appointing a blockade, is careful to reserve the rights of sovereignty, thus putting foreign Powers on their guard against any premature concession. After declaring an existing insurrection in certain States, and the obstruction of the laws for the collection of the revenue, as the motive for action, the President invokes not only the law of nations but the "laws of the United States," and, in further assertion of the national sovereignty, declares rebel cruisers to be pirates. Clearly the proclamation must be taken as a whole, and its different provisions so interpreted as to harmonize with each other. If they cannot stand together, then it is the "blockade" which must be modified by the national sovereignty, and not the national sovereignty by the blockade. Such should have been the interpretation of a friendly Power, especially when it is considered that there are numerous precedents of what the great German authority, Heffter, calls "pacific blockade," or blockade without concession of ocean belligerency, as in the case of France, England, and Russia against Turkey, 1827; France against Mexico, 1837-39; France and Great Britain against the Argentine Republic, 1838-48; Russia against the Circassians, 1831-36, illustrated by the seizure of the *Vixen* so famous in diplomatic history (*Hautefeuille des Droits et des Devoirs des Neutres*.) Cases like these led Heffter to lay down the rule that "blockade" does not necessarily constitute a *state of regular war* (*Droit International*, §§ 112, 121,) as was assumed by the British proclamation—even in the face of positive words by President Lincoln asserting the national sovereignty and appealing to the "laws of the United States." The existence of such cases was like a notice to the British Government against

the concession so rashly made. It was an all-sufficient warning, which this Power disregarded.

So far as is now known, the whole case for England is made to stand on the use of the word "blockade" by President Lincoln. Had he used any other word the concession of belligerency would have been without justification, even such as is now imagined. It was this word which, with magical might, opened the gates to all those bountiful supplies by which hostile expeditions were equipped against the United States. It opened the gates of war. Most appalling is it to think that one little word, unconsciously used by a trusting President, could be caught up by a friendly Power and made to play such a part. I may add that there is one other word often invoked for apology. It is "neutrality," which, it is said, was proclaimed between two belligerents. Nothing could be fairer, always provided that the "neutrality" proclaimed did not begin with a concession to one party, without which this party would be powerless. Between two established nations, both independent, as between Russia and France, there may be neutrality; for the two are already equal in rights, and the proclamation would be precisely equal in its operation. But where one party is an established nation and the other is nothing but an odious combination of rebels, the proclamation is most unequal in operation; for it begins by a solemn investiture of rebels with all the rights of war, saying to them, as was once said to the youthful knight, "Rise; here is a sword; use it." To call such an investiture a proclamation of neutrality is a misnomer. It was a proclamation of equality between the national Government on the one side and rebels on the other, and no plausible word can obscure this distinctive character.

Then came the building of the pirate ships, one after another. While the *Alabama* was still in the ship-yard it became apparent that she was intended for the rebels. Our Minister at London and our Consul at Liverpool exerted themselves for her arrest and detention. They were put off from day to day. On the 24th July, 1862, Mr. Adams "com-

pleted his evidence," accompanied by an opinion from the eminent barrister, Mr. Collier, afterwards Solicitor-General, declaring the plain duty of the British Government to stop her. Instead of acting promptly by the telegraph, five days were allowed to run out, when at last too tardily the necessary order was dispatched. Meanwhile the pirate ship escaped from the port of Liverpool by a stratagem and her voyage began with music and frolic. Here beyond all question was negligence, or, according to the language of Lord Brougham on another occasion, "crass negligence," making England justly responsible for all that ensued. The pirate ship found refuge in an obscure harbour of Wales, known as Moelfra Bay, where she lay in British waters *from half past seven o'clock p.m. July 29, to about three o'clock a.m. July 31*, being upward of thirty-six hours, and during this time she was supplied with men from the British steam-tug *Hercules*, which followed her from Liverpool. These thirty-six hours were allowed to elapse without any attempt to stop her. Here was another stage of "crass negligence." Thus was there negligence in allowing the building to proceed, negligence in allowing the escape from Liverpool, and negligence in allowing the final escape from the British coast. Lord Russell, while trying to vindicate his Government and repelling the complaints of the United States, more than once admitted that the escape of the *Alabama* was a "scandal and reproach," which, to my mind, is very like a confession. Language could not be stronger. Surely such an act cannot be blameless. If damages are ever awarded to a friendly Power for injuries received, it is difficult to see where they could be more strenuously claimed than in a case which the First Minister of the offending Power did not hesitate to characterize so strongly. The enlistment of the crew was not less obnoxious to censure than the building of the ship and her escape. It was a part of the transaction. The evidence is explicit. Not to occupy too much time, I refer only to the affidavit of William Passmore, who swears that he was engaged with

the express understanding that the ship was "to fight for the Government of the Confederate States of America;" that he joined her at Laird's yard at Birkenhead, near Liverpool, remaining there several days; that he found about thirty old man-of-war's men on board, among whom it was "well known that she was going out as a privateer for the Confederate Government to fight under a commission from Mr. Jefferson Davis." In a list of the crew now before me there is a large number said to be from the "Royal Naval Reserve." I might add to this testimony. The more the case is examined, the more clearly do we discern the character of the transaction. The dedication of the ship to the Rebel service, from the very laying of the keel and the organization of her voyage with England as her *naval base*, from which she drew munitions of war and men, made her departure as much a *hostile expedition* as if she had sailed forth from her Majesty's dock-yard. At a moment of profound peace, between the United States and England, there was a hostile expedition against the United States. It was in no just sense a commercial transaction, but an act of war.

The case is not yet complete. The *Alabama*, whose building was in defiance of law, international and municipal, whose escape was a "scandal and reproach," and whose enlistment of her crew was a fit sequel to the rest, after being supplied with an armament and with a rebel commander, entered upon her career of piracy.

Mark now a new stage of complicity. Constantly the pirate ship was within reach of British cruisers, and from time to time within the shelter of British ports. For six days unmolested she enjoyed the pleasant hospitality of Kingston, in Jamaica, obtaining freely the coal and other supplies so necessary to her vocation. But no British cruiser, no British magistrate, ever arrested the offending ship, whose voyage was a continuing "scandal and reproach" to the British Government. The excuse for this strange license is a curious technicality, as if a technicality could avail in this case at any stage. Borrowing a

phrase from that master of Admiralty jurisprudence, Sir William Scott, it is said that the ship "deposited" her original sin at the conclusion of her voyage, so that afterward she was blameless. But the *Alabama* never concluded her voyage until she sank under the guns of the *Kearsarge*, because she never had a port of her own. She was no better than the *Flying Dutchman*, and so long as she sailed was liable for that original sin which had impregnated every plank with an indelible dye. No British cruiser could allow her to proceed, no British port could give her shelter, without renewing the complicity of England.

The *Alabama* case begins with a fatal concession, by which the rebels were enabled to build ships in England, and then to sail them without being liable as pirates; it next shows itself in the building of the ship, in the armament, and in the escape, with so much of negligence on the part of the British Government as to constitute suffrance, if not connivance; and then again the case reappears in the welcome and hospitality accorded by British cruisers and by the magistrates of British ports to the pirate ship, when her evasion from British jurisdiction was well known. Thus at three different stages the British Government is compromised; first, in the concession of ocean belligerency, on which all depended; secondly, in the negligence which allowed the evasion of the ship in order to enter upon the hostile expedition for which she was built, manned, armed, and equipped; and thirdly, in the open complicity which, after this evasion, gave her welcome hospitality and supplies in British ports. Thus her depredations and burnings, making the ocean blaze, all proceeded from England, which, by three different acts, lighted the torch. To England must be traced, also, all the wide-spread consequences which ensued.

I take the case of the *Alabama*, because it is the best known, and because the building, equipment, and escape of this ship were under circumstances most obnoxious to judgment; but it will not be forgotten

that there were consort ships, built under the shelter of that fatal proclamation, issued in such an eclipse of just principles, and, like the ships it unloosed "rigged with curses dark." One after the other, ships were built; one after the other, they escaped on their errand; and, one after the other, they enjoyed the immunities of British ports. Audacity reached its height when iron-clad rams were built, and the perversity of the British Government became still more conspicuous by its long refusal to arrest these destructive engines of war, designed to be employed against the United States. This protracted hesitation, where the consequences were so menacing, is a part of the case. It is plain that the ships which were built under the safeguard of this ill-omened proclamation, which stole forth from the British shores, and afterward enjoyed the immunities of British ports, were not only British in origin, but British in equipment, British in armament, and British in crews. They were British in every respect, except in their commanders who were rebel; and one of these, as his ship was sinking, owed his safety to a British yacht, symbolizing the omnipresent support of England. British sympathies were active in their behalf. The cheers of a British passenger ship crossing the path of the *Alabama* encouraged the work of piracy, and the cheers of the House of Commons encouraged the builder of the *Alabama*, while he defended what he had done and exclaimed, in taunt to him who is now an illustrious member of the British Cabinet, John Bright, that he "would rather be handed down to posterity as the builder of a "dozen *Alabamas*" than be the author of the speeches of that gentleman "crying up" the institutions of the United States, which the builder of the *Alabama*, rising with his theme, declared "as of no value whatever, and as reducing the very name of liberty to an utter absurdity," while the cheers of the House of Commons echoed back his words. Thus from beginning to end, from the fatal proclamation to the rejoicing of the accidental ship and the rejoicing of the House of Commons, was this hostile

expedition protected and encouraged by England. The same spirit, which dictated the swift concession of belligerency with all its deadly incidents, ruled the hour, entering into and possessing every pirate ship.

There are two circumstances by which the whole case is aggravated. One is found in the date of the proclamation, which lifted the rebels to an equality with the National Government, opening to them everything that was open to us, whether ship-yard, foundries, or manufactories, and giving to them a flag on the ocean coequal with the flag of the Union. This extraordinary manifesto was issued on the day before the arrival of our Minister in England, so that when, after an ocean voyage, he reached the British Government, to which he was accredited, he found this great and terrible indignity to his country already perpetrated, and the flood-gates opened to infinite woes. The Minister had been announced; he was daily expected. The British Government knew of his coming. But in hottest haste they did this thing. The other aggravation is found in its flagrant, unnatural departure from that anti-slavery rule, which by manifold declarations, legislative, political, and diplomatic, was the avowed creed of England. Often was this rule proclaimed, but, if we except the great act of Emancipation, never more pointedly than in the famous circular of Lord Palmerston, while Minister of Foreign Affairs, announcing to all nations that England was pledged to the universal abolition of slavery. And now, when slaveholders, in the very madness of barbarism, broke away from the National Government and attempted to found a new empire with slavery as its declared corner-stone, anti-slavery England, without a day's delay, without even waiting the arrival of our Minister, who was known to be on his way, made haste to decree that this shameful and impossible pretension should enjoy equal rights with the National Government in her ship-yards, foundries, and manufactories, and equal rights on the ocean. Such was the decree. Rebel slaveholders, occupied in a hideous attempt, were taken by the hand, and thus with the official protection

and the God-speed of anti-slavery England, commenced their accursed work. I close this part of the argument by the testimony of Mr. Bright, who, in a speech at Rochdale, among his neighbours, February 3, 1863, thus exhibits the criminal complicity of England :—

“ I regret, more than I have words to express, this painful fact, that of all the countries in Europe this country is the only one which has men in it who are willing to take active steps in favour of this intended slave Government. We supply the ships; we supply the arms, the munitions of war; *we give aid and comfort to this foulest of all crimes. Englishmen only do it.*”—Bright's Speeches, vol. i. p. 239.

At last the rebellion succumbed. British ships and British supplies had done their work, but they failed. And now the day of reckoning has come; but with little apparent sense of what is due on the part of England. Without one soothing word for a friendly power deeply aggrieved, without a single regret for what Mr. Cobden, in the House of Commons, called “the cruel losses” inflicted upon us, for what Mr. Bright called “aid and comfort to the foulest of crimes,” or for what a generous voice from Oxford University denounced as a “flagrant and maddening wrong,” England simply proposes to submit the question of liability for “individual losses” to an anomalous tribunal, where chance plays its part. This is all. Nothing is admitted even on this question; no rule for the future is established; while nothing is said of the indignity to the nation, nor of the damages to the nation. On an earlier occasion it was otherwise. There is an unhappy incident in our relations with Great Britain which attests how in other days “individual losses” were only a minor element in reparation for a wrong received by the nation. You all know from history how in time of profound peace, and only a few miles outside the Virginia capes, the British frigate *Leopard* fired into the national frigate *Chesapeake*, pouring broadside upon broadside, killing three persons and wounding eighteen some severely, and then boarding her carried off four others as British subjects. This was in the summer of 1807. The brilliant Mr. Canning, British Minister of Foreign

Affairs, promptly volunteered overtures for an accommodation, by declaring his Majesty's readiness to take the whole of the circumstances of the case into consideration, and "to make reparation for *any alleged injury to the sovereignty of the United States*, whenever it should be "clearly shown that such injury has been actually sustained and that such reparation is really due." Here was a good beginning. There was to be reparation for an injury to the national sovereignty. After years of painful negotiation, the British Minister at Washington, under date of November 1, 1811, offered to the United States three propositions: first, the disavowal of the unauthorized act; secondly, the immediate restoration, so far as circumstances would permit, of the men forcibly taken from the *Chesapeake*; and thirdly, a suitable pecuniary provision for the sufferers in consequence of the attack on the *Chesapeake*; concluding with these words:—

"These honourable propositions are made with the sincere desire that they may prove satisfactory to the Government of the United States, and I trust they will meet with that amicable reception which their conciliatory nature entitles them to. I need scarcely add how cordially I join with you in the wish that they may prove introductory to a removal of all the differences depending between our two countries."—*State Papers, Foreign Affairs*, vol. iii. p. 500.

I adduce this historic instance to illustrate partly the different forms of reparation. Here, of course, was reparation to individuals; but there was also reparation to the nation, whose sovereignty had been outraged. There is another instance, which is not without authority. In 1837 an armed force from Upper Canada crossed the river just above the Falls of Niagara and burnt an American vessel, the *Caroline*, while moored to the shores of the United States. Mr. Webster, in his negotiation with Lord Ashburton, characterised this act as "of itself "a wrong and offence to the sovereignty and the dignity "of the United States, for which to this day no atonement, or even apology, has been made by her Majesty's "Government;" all these words being strictly applicable

to the present case. Lord Ashburton, in reply, after recapitulating some mitigating circumstances and expressing a regret "that some explanation and apology "for this occurrence was not immediately made," proceeds to say :—

"Her Majesty's Government earnestly desire that a reciprocal respect for the independent jurisdiction and authority of neighbouring States may be considered among the first duties of all Governments; and I have to repeat the assurance of regret they feel that the event of which I am treating should have disturbed the harmony they so anxiously wish to maintain with the American people and Government."—*Webster's Works*, vol. vi. p. 300.

Here again was reparation for a wrong done to the nation. Looking at what is due to us on the present occasion, we are brought again to the conclusion that the satisfaction of individuals whose ships have been burned or sunk is only a small part of what we may justly expect. As in the earlier cases where the national sovereignty was insulted, there should be an acknowledgment of wrong, or at least of liability, leaving to the commissioners the assessment of damages only. The blow inflicted by that fatal proclamation, which insulted our national sovereignty and struck at our unity as a nation, followed by broadside upon broadside, driving our commerce from the ocean, was kindred in character to those earlier blows; and when we consider that it was in aid of Slavery, it was a blow at civilization itself. Besides degrading us and ruining our commerce, its direct and constant influence was to encourage the Rebellion, and to prolong the war waged by slave-masters at such cost of treasure and blood. It was a terrible mistake, which I cannot doubt that good Englishmen must regret. And now, in the interest of peace, it is the duty of both sides to find a remedy, complete, just, and conciliatory, so that the deep sense of wrong and the detriment to the Republic may be forgotten in that proper satisfaction which a nation loving justice cannot hesitate to offer.

Individual losses may be estimated with reasonable accuracy. Ships burned or sunk with their cargoes may be

counted, and their value determined ; but this leaves without recognition the vaster damage to commerce driven from the ocean, and that other damage, immense and infinite, caused by the prolongation of the war, all of which may be called *national* in contradistinction to *individual*. Our *national losses* have been frankly conceded by eminent Englishmen. I have already quoted Mr. Cobden, who did not hesitate to call them "cruel losses." During the same debate in which he let drop this testimony, he used other words, which show how justly he comprehended the case. "*You have been,*" said he, "*carrying on war from these shores with the United States, and have been inflicting an amount of damage on that country greater than would be produced by many ordinary wars. It is estimated that the loss sustained by the capture and burning of American vessels has been about 15,000,000 dollars, or nearly £3,000,000. But this is a small part of the injury which has been inflicted on the American marine.* We have rendered the rest of her vast mercantile property useless." Thus, by the testimony of Mr. Cobden, were those individual losses, which are alone recognized by the pending Treaty, only "a small part of the injury inflicted." After confessing his fears with regard to "the heaping up of a "*gigantic material grievance* " such as was then rearing," he adds, in memorable words :—

"You have already done your worst towards the American mercantile marine. What with the high rate of insurance, what with these captures, and what with the amount of damage you have done to that which is left, you have virtually made valueless that vast property. Why, if you had gone and helped the Confederates by bombarding all the accessible seaport towns of America, a few lives might have been lost, which, as it is, have not been sacrificed, but you could hardly have done more injury in the way of destroying property than you have done by these few cruisers. [Hear, hear.]"

With that clearness of vision, which he possessed in such rare degree, this statesman saw that England had "virtually made valueless a vast property," as much as if this Power had bombarded "all the accessible seaport

towns of America." So strong and complete is this statement that any further citation seems superfluous; but I cannot forbear adducing a pointed remark in the same debate, by that able gentleman Mr. William E. Forster:—

"There could not be a stronger illustration of the damage which has been done to the American trade by these cruisers, than the fact that so completely was the American flag driven from the ocean, that the *Georgia*, on her second cruise, did not meet a single American vessel in six weeks, though she saw no less than seventy vessels in a very few days."

This is most suggestive. So entirely was our commerce driven from the ocean, that for six weeks not an American vessel was seen!

Another Englishman, in an elaborate pamphlet, bears similar testimony. I refer to the pamphlet of Mr. Edge, published in London by Ridgway in 1864, and entitled "The Destruction of the American Carrying Trade." After setting forth at length the destruction of our commerce by British pirates, this writer thus foreshadows the damages:—

"Were we the sufferers, we should certainly demand compensation for the loss of the property captured or destroyed—for the interest of the capital invested in the vessels and their cargoes, and maybe a fair compensation in addition for all and any injury accruing to our business interests from the depredations upon our shipping. *The remuneration may reach a high figure in the present case; but it would be a simple act of justice, and might prevent incomparably greater loss in the future.*"

Such is the candid and explicit testimony of Englishmen, pointing the way to the proper rule of damages. How to authenticate the extent of national loss with reasonable certainty is not without difficulty; but it cannot be doubted that such a loss occurred. It is folly to question it. The loss may be seen in various circumstances, as in the rise of insurance on all American vessels; the fate of the carrying trade, which was one of the great resources of our country; the diminution of our tonnage, with the corresponding increase of British tonnage; the falling off in our exports and imports, with due allowance for our abnormal currency and the diver-

sion of war. These are some of the elements; and here again we have British testimony. Mr. W. E. Forster, in the speech already quoted, announces that "the carrying trade of the United States was transferred to British merchants;" and Mr. Cobden, with his characteristic mastery of details, shows that, according to an official document laid on the table of Parliament, American shipping had been transferred to English capitalists as follows:—In 1858, 33 vessels, 13,638 tons; 1859, 49 vessels, 21,673 tons; 1860, 41 vessels, 13,638 tons; 1861, 126 vessels, 71,673 tons; 1862, 135 vessels, 64,573 tons; and 1863, 348 vessels, 252,579 tons; and he adds, "I am told that this operation is now going on as fast as ever;" and this circumstance he declares to be "the gravest part of the question of our relations with America." But this "gravest part" is left untouched by the pending treaty. Our own official documents are in harmony with these English authorities. For instance, I have before me now the report of the Secretary of the Treasury for 1868, with an appendix by Mr. Nimmo on shipbuilding in our country. From this report it appears that in the New-England States, during the year 1855, the most prosperous year of American shipbuilding, 305 ships and barks, and 173 schooners were built, with an aggregate tonnage of 326,429 tons, while during the last year only 58 ships and barks, and 213 schooners were built, with an aggregate tonnage of 98,697 tons. I add a further statement from the same report:—

"During the ten years from 1852 to 1862 the aggregate tonnage of American vessels entered at seaports of the United States from foreign countries was 30,225,475 tons, and the aggregate tonnage of foreign vessels entered was 14,699,192 tons, while during the five years, from 1863 to 1868, the aggregate tonnage of American vessels entered was 9,299,877 tons, and the aggregate tonnage of foreign vessels entered was 14,116,427 tons—showing that American tonnage in our foreign trade had fallen from 206 to 66 per cent. of foreign tonnage in the same trade. Stated in other terms, during the decade from 1852 to 1862, 67 per cent. of the total tonnage entered from foreign countries was in American vessels, and during the five years from 1863 to 1868, only 39 per cent. of the aggregate

tonnage entered from foreign countries was in American vessels
—a relative falling off of nearly one-half."

[Finance Report for 1868, page 496.]

It is not easy to say how much of this change, which has become chronic, may be referred to British pirates; but it cannot be doubted that they contributed largely to produce it. They began the influences under which this change has continued. There is another document which bears directly upon the present question. I refer to the interesting report of Mr. Morse, our Consul at London, made during the last year, and published by the Secretary of State. After a minute inquiry the report shows that, on the breaking out of the Rebellion in 1861, the entire tonnage of the United States, coasting and registered, was 5,539,813 tons, of which 2,642,625 tons were registered and employed in foreign trade; and that at the close of the Rebellion in 1865, notwithstanding an increase in coasting tonnage, our registered tonnage had fallen to 1,602,528 tons, being a loss during the four years of more than a million tons, amounting to about 40 per cent. of our foreign commerce. During the same four years the total tonnage of the British empire rose from 5,895,369 tons to 7,322,604 tons, the increase being especially in the foreign trade. The report proceeds to say that as to the cause of the decrease in America and the corresponding increase in the British Empire "there can be no room for question or doubt." Here is the precise testimony from one who at his official post in London watched this unprecedented drama, with the outstretched ocean as a theatre, and British pirates as the performers :—

"Conceding to the rebels the belligerent rights of the sea, when they had not a solitary war ship afloat, in dock, or in process of construction, and when they had no power to protect or dispose of prizes, made their sea-rovers, when they appeared, the instruments of terror and destruction to our commerce. From the appearance of the first corsair in pursuit of their ships, American merchants had to pay not only the marine but the war risk also on their ships. After the burning of one or two ships with their neutral cargoes, the shipowner had to pay the

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war risk on the cargo his ship had on freight as well as on the ship. Even then, for safety, the preference was, as a matter of course, always given to neutral vessels, and American ships could rarely find employment on these hard terms as long as there were good neutral ships in the freight markets. Under such circumstances there was no course left for our merchant shipowners but to take such profitless business as was occasionally offered them, let their ships be idle at their moorings or in dock with large expense and deterioration constantly going on, or to sell them outright when they could do so without ruinous sacrifice, or put them under foreign flags for protection."—*Report of F. H. Morse, United States Consul at London, dated January 1, 1868.*

Beyond the actual loss in the national tonnage, there was a further loss in the arrest of our national increase in this branch of industry, which an intelligent statistician puts at five per cent. annually, making in 1866 a total loss on this account of 1,384,958 tons, which must be added to 1,229,035 tons actually lost. The same statistician, after estimating the value of a ton at 40 dollars gold, and making allowance for old and new ships, puts the sum total of national loss on this account at 110,000,000 dollars. To these authorities I add that of the National Board of Trade, which in a recent report on American Shipping, after setting forth the diminution of our sailing tonnage, says that it is all to be traced to the war on the ocean, and the result is summed up in the words, that "while the tonnage of the nation was rapidly "disappearing by *the ravages of the Rebel cruisers* and by "sales abroad, there was no construction of new vessels "going forward to counteract the decline even in part." Such is the various testimony, all tending to one conclusion.

This is what I have to say for the present on *national losses* through the destruction of commerce. These are large enough; but there is another chapter where they are larger far. I refer, of course, to the national losses caused by the prolongation of the war and traceable directly to England. No candid person, who studies this eventful period, can doubt that the rebellion was originally encouraged by hope of support from Eng-

land ; that it was strengthened at once by the concession of belligerent rights on the ocean ; that it was fed to the end by British supplies ; that it was quickened into renewed life with every report from the British pirates, flaming anew with every burning ship ; nor can it be doubted that without British intervention the Rebellion would have soon succumbed under the well-directed efforts of the National Government. Not weeks or months, but years were added in this way to our war, so full of the most costly sacrifice. The subsidies which in other times England contributed to continental wars were less effective than the aid and comfort which she contributed to the Rebellion. It cannot be said too often that the *naval base* of the Rebellion was not in America, but in England. Mr. Cobden boldly said in the House of Commons that England made war from her shores on the United States "with an amount of damage to that country "greater than in many ordinary wars." According to this testimony, the conduct of England was war ; but it must not be forgotten that this war was carried on at our sole cost. The United States paid for the war waged by England upon the National Unity.

The sacrifice of precious life is beyond human compensation ; but there may be an approximate estimate of the national loss in money. The Rebellion was suppressed at a cost of more than four thousand million dollars, a considerable portion of which has already been paid, leaving twenty-five hundred millions as a national debt to burden the people. If, through British intervention, the war was doubled in duration, or in any way extended, as cannot be doubted, then is England justly responsible for the additional expenditure to which our country was doomed ; and, whatever may be the final settlement of these great accounts, such must be the judgment in any chancery which consults the simple equity of the case.

This plain statement, without one word of exaggeration, is enough to exhibit the magnitude of the national losses, whether from the destruction of our commerce or the

prolongation of the war. They stand before us mountain high, with a base broad as the nation, and a mass stupendous as the rebellion itself. It will be for wise statesmanship to determine how this fearful accumulation, like Pelion upon Ossa, shall be removed out of sight, so that it shall no longer overshadow the two countries.

Perhaps I ought to anticipate an objection from the other side, to the effect that these national losses, whether from the destruction of our commerce or the prolongation of the war, are indirect and remote, so as not to be a just clause of claim. This is expressed at the common law by the rule that "damages must be for the natural and proximate consequence of an act."—(2 *Greenleaf, Ev.*, p. 210). To this excuse the answer is explicit. The damages suffered by the United States are twofold, individual and national, being in each case direct and proximate, although in the one case individuals suffered and in the other case the nation. It is easy to see that there may be occasions where, overtopping all individual damages, are damages suffered by the nation, so that reparation to individuals would be insufficient; nor can the claim of the nation be questioned simply because it is large, or because the evidence with regard to it is different from that in the case of an individual. In each case the damage must be proved by the best possible evidence, and this is all that law or reason can require. In the case of the nation the evidence is historic; and this is enough. Impartial history will regard the national losses from British intervention, and it is only reasonable that the evidence of these losses should not be excluded from judgment. Because the case is without precedent, because no nation ever before received such injury from a friendly power, this can be no reason why the case should not be considered on the evidence. Even the rule of the common law furnishes no impediment, for our damages are the natural consequence of what was done. But the rule of the Roman law, which is the rule of International law, is broader than that of the common law. The measure

of damages, according to the Digest, is, "whatever may have been lost or might have been gained : " *quantum mihi abest, quantumque lucrari potui* ; and this same rule seems to prevail in the French law, borrowed from the Roman law. This rule opens the door to ample reparation for all damages, whether individual or national. There is another rule of the common law, in harmony with strict justice, which is applicable to the case. I find it in the law relating to *nuisances*, which provides that there may be two distinct proceedings—first, in behalf of individuals, and secondly, in behalf of the community. Obviously, reparation to individuals does not supersede reparation to the community. The proceeding in the one case is by action at law, and in the other, by indictment. The reason assigned by Blackstone for the latter is, "because the damages being common to all the king's subjects, no one can assign his particular proportion of it."—(3 *Black. Com.*, p. 219.) But this is the very case with regard to damages sustained by the nation. A familiar authority furnishes an additional illustration, which is precisely in point:—

"No person, natural or corporate, can have an action for a *public nuisance*, or punish it; but only the king in his public capacity of supreme governor and *pater familias* of the kingdom. Yet this rule admits of one exception; where a private person suffers some extraordinary damage beyond the rest of the king's subjects."—*Tomlin's Law Dict.*, Art. '*Nuisance*.'

Applying this rule to the present case, the way is clear. Every British pirate was a *public nuisance*, involving the British Government, which must respond in damages, not only to the individuals who have suffered, but also to the National Government, acting as *pater familias* for the common good of all the people.

Thus by an analogy of the common law, in the case of a public nuisance, also by the strict rule of the Roman law, which enters so largely into International Law, and even by the rule of the common law relating to damages, all losses, whether individual or national, are the just subject of claim. It is not I who say this, it is the law. The

colossal sum total may be seen, not only in the losses of individuals, but in those national losses caused by the destruction of our commerce and the prolongation of the war, all of which may be traced directly to England :

—illud ab uno

Corpore, et ex unâ pendebat origine bellum.

Three times is this liability fixed : first, by the concession of ocean belligerency, opening to the rebels ship-yards, foundries, and manufactories, and giving to them a flag on the ocean ; secondly, by the organization of hostile expeditions, which, by admissions in Parliament, were nothing less than piratical war on the United States with England as the naval base ; and thirdly, by welcome, hospitality, and supplies extended to these pirate ships in ports of the British empire. Show either of these and the liability of England is complete. Show the three and this power is bound by a triple cord.

Mr. President, in concluding these remarks, I desire to say that I am no volunteer. For several years I have carefully avoided saying anything on this most irritating question, being anxious that negotiations should be left undisturbed to secure a settlement which could be accepted by a deeply injured nation. The submission of the pending treaty to the judgment of the Senate left me no alternative. It became my duty to consider it carefully in committee, and to review the whole subject. If I failed to find what we had a right to expect, and, if the just claims of our country assumed unexpected proportions, it was not because I would bear hard on England, but because I wish most sincerely to remove all possibility of strife between our two countries ; and it is evident that this can be done only by first ascertaining the nature and extent of difference. In this spirit I have spoken to-day. If the case against England is strong, and if our claims are unprecedented in magnitude, it is only because the conduct of this Power at a trying period was most unfriendly, and the injurious consequences of this conduct were on a scale corresponding to the theatre

of action. Life and property were both swallowed up, leaving behind a deep-seated sense of enormous wrong, as yet unatoned and even unacknowledged, which is one of the chief factors in the problem now presented to the statesmen of both countries. The attempt to close this great international debate without a complete settlement, is little short of puerile.

With the lapse of time and with minuter consideration, the case against England becomes more grave, not only from the questions of international responsibility which it involves, but from better comprehension of the damages which are seen now in their true proportions. During the war, and for some time thereafter, it was impossible to state them. The mass of a mountain cannot be measured at its base. The observer must occupy a certain distance, and this rule of perspective is justly applicable to damages which are vast beyond precedent.

A few dates will show the progress of the controversy, and how the case enlarged. Going as far back as 20th November, 1862, we find our Minister in London, Mr. Adams, calling for redress from the British Government on account of the *Alabama*. This was the mild beginning. On the 23rd of October, 1863, in another communication, the same Minister suggested to the British Government "any fair and equitable form of arbitrament or reference." This proposition slumbered in the British Foreign Office for nearly two years, during which the *Alabama* was pursuing her piratical career, when on August 30, 1865, it was awakened by Lord Russell, only to be knocked down, in these words:—

"In your letter of Oct. 23, 1863, you were pleased to say that the Government of the United States is ready to agree to any form of arbitration." * * * * "Her Majesty's Government must, therefore, decline either to make reparation and compensation for the captures made by the *Alabama*, or to refer the question to any foreign State."

Such was our repulse from England, having at least the merit of frankness, if nothing else. On the 17th of

October, 1865, our minister informed Lord Russell that the United States had finally resolved to make no effort for arbitration. Again the whole question slumbered until the 27th of August, 1866, when Mr. Seward presented a list of individual claims on account of the pirate *Alabama*. From that time negotiation has continued with ups and downs, until at last the pending treaty was signed. Had the early overtures of our Government been promptly accepted, or had there been at any time a just recognition of the wrong done, I doubt not that this great question would have been settled; but the rejection of our very moderate propositions and the protracted delay, which afforded an opportunity to review the case in its different bearings, have awakened the people to the magnitude of the interests involved. If our demands are larger now than at our first call, it is not the only time in history where such a rise has occurred. The story of the Sibyl is repeated, and England is the Roman king.

Shall these claims be liquidated and cancelled promptly, or allowed to slumber until called into activity by some future exigency? There are many among us, who, taking counsel of a sense of national wrong, would leave them to rest without settlement, so as to furnish a precedent for retaliation in kind, should England find herself at war. There are many in England who, taking counsel of a perverse political bigotry, have spurned them absolutely; and there are others, who, invoking the point of honour, assert that England cannot entertain them without compromising her honour. Thus there is peril from both sides. It is not difficult to imagine one of our countrymen saying with Shakspeare's Jew, "The villainy you teach me I will execute, and it shall go hard but I will better the instruction;" nor is it difficult to imagine an Englishman firm in his conceit that no apology can be made and nothing paid. I cannot sympathize with either side. Be the claims more or less, they are honestly presented, with the conviction that they are just, and they should be considered candidly, so that they shall no longer

lower like a cloud ready to burst upon two nations, which, according to their inclinations, can do each other such infinite injury or such infinite good. I know it is sometimes said that war between us must come sooner or later. I do not believe it. But if it must come, let it be later, and then I am sure it will never come. Meanwhile good men must unite to make it impossible.

Again I say this debate is not of my seeking. It is not tempting, for it compels criticism of a Foreign Power with which I would have more than peace, more even than concord. But it cannot be avoided. The truth must be told, not in anger, but in sadness. England has done to the United States an injury most difficult to measure. Considering when it was done, and in what complicity, it is most unaccountable. At a great epoch of history, not less momentous than that of the French Revolution or that of the Reformation, when civilization was fighting a last battle with Slavery, England gave her name, her influence, her material resources to the wicked cause, and flung a sword into the scale with Slavery. Here was a portentous mistake. Strange that the land of Wilberforce, after spending millions for Emancipation, after proclaiming everywhere the truths of liberty, and ascending to glorious primacy in the sublime movement for the universal abolition of Slavery, could do this thing! Like every departure from the rule of justice and good-neighbourhood, her conduct was pernicious in proportion to the scale of operations, affecting individuals, corporations, communities, and the nation itself. And yet, down to this day, there is no acknowledgment of this wrong; not a single word. Such a generous expression would be the beginning of a just settlement, and the best assurance of that harmony between two great and kindred nations which all must desire.

* * The Treaty was rejected by a vote of 54 to 1.

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